

Steven F. Molo (*pro hac vice*)
 Eric A. Posner (*pro hac vice*)
 Thomas J. Wiegand (*pro hac vice*)
 Bonnie K. St. Charles (*pro hac vice*)
 MOLOLAMKEN LLP
 300 N. LaSalle Street
 Chicago, IL 60654
 smolo@mololamken.com
 eposner@mololamken.com
 twiegand@mololamken.com
 bstcharles@mololamken.com
 (312) 450-6700

Alexandra C. Eynon (*pro hac vice*)
 Pratik K. Raj Ghosh (*pro hac vice*)
 Sara Tofighbakhsh (*pro hac vice*)
 MOLOLAMKEN LLP
 430 Park Avenue
 New York, NY 10022
 aeynon@mololamken.com
 prajghosh@mololamken.com
 stofighbakhsh@mololamken.com
 (212) 607-8160

William J. Cooper (CA Bar No. 304524)
 Natalie Cha (CA Bar No. 327869)
 CONRAD | METLITZKY | KANE LLP
 217 Leidesdorff Street
 San Francisco, CA 94111
 wcooper@conmetkane.com
 ncha@conmetkane.com
 (415) 343-7100

Arthur H. Bryant (CA Bar No. 208365)
 ARTHUR BRYANT LAW, P.C.
 6871 Aitken Drive
 Oakland, CA 94611
 arthur@arthurbryantlaw.com
 (510) 391-5454

Counsel for Objectors

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

IN RE COLLEGIATE ATHLETE NIL
 LITIGATION

Case No. 4:20-cv-03919-CW

**MENKE-WEIDENBACH OBJECTORS'
 NOTICE OF MOTION AND MOTION TO
 EXTEND TIME FOR FILING OF
 MOTION FOR ATTORNEYS' FEES**

Hon. Claudia Wilken

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT the Menke-Weidenbach Objectors respectfully move this Court, pursuant to Federal Rule of Civil Procedure 6(b) and Local Rule 6-3, for an extension of time to file a motion for attorneys' fees.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Proposed Order granting the Menke-Weidenbach Objectors' Motion to Extend Time to File a Motion for Attorneys' Fees, and the Declaration of Steven F. Molo ("Decl.") filed herewith, as well as on all of the pleadings, papers, records, and orders in this action and such matters as may come before the Court prior to the disposition of this motion.

INTRODUCTION

Counsel for the Menke-Weidenbach Objectors (“Objectors’ Counsel”) respectfully request an extension of time to file their motion for attorneys’ fees. An extension is necessary to allow the Menke-Weidenbach Objectors’ to seek an award of fees in recognition of their contributions to the approved settlement, which secured substantial benefits for the class. Objectors’ Counsel therefore request an extension of the deadline to seek attorneys’ fees to 30 days following the issuance of the latest mandate issued in any appeal from this action. In the alternative, Objectors’ Counsel seek an extension to file their fee motion by July 28, 2025.

BACKGROUND

Following extensive briefing and argument by Objectors’ Counsel, the Court found that immediate implementation of the settlement’s roster-cap provisions was unfair and unreasonable under Rule 23(e) of the Federal Rules of Civil Procedure. *See* Dkt. 948 at 2-3. The Court directed the parties to “modify the settlement agreement so that members of the Injunctive Relief Settlement Class will not be harmed by the immediate implementation of the roster limits provisions,” and instructed them to do so in consultation with Objectors’ Counsel. *Id.* at 4-5.

Counsel for the Menke-Weidenbach Objectors quickly coordinated with other objectors’ counsel to correct the settlement’s defects, presenting detailed proposals to the mediator and engaging in numerous negotiations with the parties’ counsel by email, phone, and videoconference. The parties proposed the modified Fourth Amended Settlement on May 7, 2025. *See* Dkts. 958, 959. Class Counsel touted that the amended settlement secured “additional” and “highly valuable protection[s]” from the roster caps to class members, insisted those protections would address objectors’ concerns, and committed themselves to enforcing those protections. Dkt. 958 at 1-4 & n.1, n.2. The Menke-Weidenbach Objectors filed their response seeking greater protection early because Objectors’ Counsel understood the effect of this issue on an estimated 25,000 class members facing roster cuts or who might be forced into the transfer portal. *See* Dkt. 961; Decl. ¶ 11.

1 The Court approved the Fourth Amended Settlement as modified on June 6, 2025. *See*
 2 Dkt. 978 (“Op.”). In the Court’s judgment, the approved settlement contained substantial
 3 improvements that rendered it capable of approval. *Id.* at 6-7, 50-51.

4 Attorneys for objectors may seek attorneys’ fees when they offer a substantial benefit to
 5 the class. *Rodriguez v. Disner*, 688 F.3d 645, 658 (9th Cir. 2012). Objectors’ Counsel’s efforts
 6 were instrumental in persuading the Court that the Third Amended Settlement was “not fair and
 7 reasonable” to a “significant number of class members.” Dkt. 948 at 2-3. Specifically, Objectors’
 8 Counsel spent thousands of hours drafting multiple briefs and compiling 196 sworn declarations
 9 demonstrating that the settlement was deficient under Rule 23(e) because class members were
 10 harmed by immediate implementation of roster caps. *See, e.g.*, Dkts. 475, 628-3, 628-5. Without
 11 the efforts of Objectors’ Counsel, the parties would not have modified the settlement to the benefit
 12 of the class. *See* Dkt. 796 (parties’ post-Fairness Hearing brief declining to modify the Third
 13 Amended Settlement); Dkt. 807 (Menke-Weidenbach Objectors’ response); Dkt. 948 (Order
 14 denying approval of the Third Amended Settlement).

15 When the Court granted approval of the Fourth Amended Settlement, it overruled the
 16 Menke-Weidenbach Objectors’ remaining objections. *Op.* at 42, 46-47, 49-53, 57-60; Dkts. 979,
 17 980. Under the Federal Rules, notices of appeal must be filed within 30 days after the entry of
 18 judgment. Fed. R. App. P. 4(1)(A). Two objectors have since appealed, which stayed distribution
 19 of settlement funds until the appeals are resolved under the terms of the Fourth Amended
 20 Settlement. Dkt. 958-1 (“Fourth Am. Settlement”) § D.18.

21 While diligently considering their options for appeal during the ongoing 30-day period,
 22 Objectors’ Counsel inadvertently overlooked that the deadline for parties to file a claim for
 23 attorneys’ fees – 14 days from the entry of judgment – elapsed on June 20, 2025. Fed. R. Civ. P.
 24 23(h), 54(d)(2)(b)(i). Upon discovering the oversight, Objectors’ Counsel promptly requested that
 25 Class Counsel and counsel for Defendants stipulate to an extension of time to file counsel’s motion
 26 for fees. Decl. ¶ 6. Class Counsel declined, shockingly writing that their “[a]nswer might be
 27
 28

different if you weren't appealing but so long as that's possible the answer is no." *Id.* Counsel for Defendants also declined. *Id.*

ARGUMENT

The Court may extend any deadline "on motion made after the time has expired if the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(1)(B). To determine whether neglect is excusable, the Court considers "(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)). All four factors weigh in the Menke-Weidenbach Objectors' favor.

A. Danger of Prejudice

An extension of time to file a motion for attorneys' fees until after any mandate issues on appeal does not prejudice any party. Other objectors have already noticed appeals. Dkts. 978, 979; *see* Dkts. 982, 984. Under the terms of the Fourth Amended Settlement, payments to the class, Class Counsel, or "Additional Counsel" are stayed until all appeals from this action are finally resolved. Fourth Am. Settlement § D.18. Allowing Objectors' Counsel to file their fee motion until 30 days after the resolution of appellate proceedings – or until some other time in the future before the appeal will be decided – therefore has no effect on the distribution of settlement funds.

There is also no prejudice to Class Counsel. The Court has not decided Class Counsel's motion for attorneys' fees. *See* Op. at 36 n.5; Dkt. 583. And in any event, payment of any award is stayed until all appeals are decided. Fourth Am. Settlement § D.18.

Additionally, class members benefiting from the injunctive relief provisions of the Fourth Amended Settlement will not be prejudiced. The Injunctive Relief Settlement is not stayed during the pendency of any appeals, *see* Fourth Am. Settlement § D.18, and any fees Objectors' Counsel seek will not be paid from that relief.

1 By contrast, the Menke-Weidenbach Objectors will be harmed if an extension of time to
2 file a motion for fees is denied. Objectors' Counsel expended thousands of hours working to
3 secure a substantial benefit that is immediately benefiting the class. Objectors' Counsel exposed
4 real flaws in the settlement that the Court considered sufficiently serious to withhold approval at
5 each stage. Due to Objectors' Counsel's argument at the preliminary approval hearing that the
6 settlement overbroadly released Title IX claims, the parties narrowed the release. Dkt. 525 at
7 32:6-8. And at the final Fairness Hearing, because Objectors' Counsel presented the Court with
8 compelling arguments supported by 196 affidavits of class members – giving them a voice to
9 object to a serious defect in the settlement's roster caps that threatened to harm an estimated
10 25,000 student-athletes, *see* Dkts. 628, 741 – the Court rejected the settlement and directed
11 modification of the roster cap provisions. Dkt. 948 at 4.

12 The Menke-Weidenbach Objectors should be granted a reasonable opportunity to seek a
13 fee award recognizing the benefits their considerable efforts made to the settlement.

14 **B. Impact on Proceedings**

15 For the same reasons, an extension of time to file a motion for fees will not delay the
16 remaining proceedings in this case. The only unresolved motion is Class Counsel's motion for
17 attorneys' fees, and any payments that would issue from the Court's determination of that motion
18 are stayed until resolution of all appeals. Indeed, extending the time to file a motion for fees until
19 after the resolution of all appeals will enhance efficient resolution of the fee motions. If the
20 judgment is vacated, Objectors' Counsel will account for any additional benefits secured for the
21 class in a single fee motion, rather than piecemeal.

22 **C. Reason for the Delay**

23 Objectors' Counsel inadvertently overlooked the fee-motion deadline while diligently
24 evaluating appellate options on behalf of the Menke-Weidenbach Objectors, which runs on a
25 longer 30-day deadline. That consideration continues to involve extensive review of the merits of
26 any such appeal. It has been Objectors' Counsel's experience that the issue of fees is usually
27
28

1 addressed following the resolution of appeals of a settlement. Objectors' Counsel greatly regrets
2 their honest oversight.

3 **D. Good Faith**

4 Objectors' Counsel's request for an extension is in good faith. Throughout this litigation,
5 Objectors' Counsel diligently represented the interests of hundreds of objectors, engaged in
6 multiple rounds of briefing, argued at the Final Fairness Hearing, and participated in mediation
7 with the parties to improve the settlement for the benefit of the class. Objectors' Counsel have
8 consistently expressed deep respect for the difficult work of the parties in negotiating the
9 settlement.

10 Moreover, upon discovering the oversight of the fee motion deadline on June 23,
11 Objectors' Counsel immediately reached out to Class Counsel and counsel for Defendants to seek
12 a stipulation to extend the time to file. Decl. ¶6. The next day, Class Counsel notified Objectors'
13 Counsel that they withheld their consent, stating their "[a]nswer might be different if you weren't
14 appealing but so long as that's possible the answer is no." *Id.* Shockingly, Class Counsel was
15 giving Objectors' Counsel a choice of putting Objectors' Counsel's interests above their clients.
16 Apparently, Class Counsel believed they can extort Objectors' Counsel into abandoning their
17 ethical responsibilities to their clients in exchange for agreeing to this motion. That will not
18 happen.

19 Upon receiving Class Counsel's response, Objectors' Counsel promptly prepared this
20 motion. *Id.*

21 **CONCLUSION**

22 Objectors' Counsel respectfully request an extension of time to file their motion for
23 attorneys' fees no later than 30 days following the issuance of the latest mandate in all appeals
24 from this action. In the alternative, Objectors' Counsel seek an extension to file their fee motion
25 by July 28, 2025.

1 Dated: June 25, 2025

2 /s/ Steven F. Molo

3 Steven F. Molo (*pro hac vice*)

4 Eric A. Posner (*pro hac vice*)

5 Thomas J. Wiegand (*pro hac vice*)

6 Bonnie K. St. Charles (*pro hac vice*)

7 MOLOLAMKEN LLP

8 300 N. LaSalle Street

9 Chicago, IL 60654

10 Alexandra C. Eynon (*pro hac vice*)

11 Pratik K. Raj Ghosh (*pro hac vice*)

12 Sara Tofighbakhsh (*pro hac vice*)

13 MOLOLAMKEN LLP

14 430 Park Avenue

15 New York, NY 10022

Respectfully submitted,

/s/ William J. Cooper

William J. Cooper (CA Bar No. 304524)

Natalie Cha (CA Bar No. 327869)

CONRAD | METLITZKY | KANE LLP

217 Leidesdorff Street

San Francisco, CA 94111

/s/ Arthur H. Bryant

Arthur H. Bryant (CA Bar No. 208365)

ARTHUR BRYANT LAW, P.C.

6871 Aitken Drive

Oakland, CA 94611

Counsel for Objectors